Supreme Court, U.S.
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No. _____

In

The Supreme Court of the United States

October Term, 1995

Willie F. Brown and Doris N. Brown,
parents of Sarah J. Brown,

Petitioners-Appellants

V.

Secretary of Health and Human Services,

Respondents

On Petition for Writ of Certiorari
To The United States Court Of Appeals
For The Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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10 pp

QUESTIONS PRESENTED

1. Why should our child be denied help under USC 300aa11(6)(a)?

2. Why doesn't the court feel we fall under USC 300aa11(5)(a)?

3. Why didn't the Court inform us in ample time instead of waiting approximately five (5) years now that we have no other avenue to take?

4. Why was our case reviewed three (3) times (each time asking for additional information) before the decision of Special Master Elizabeth Wright?

5. Why didn't the Secretary of the Department of Health properly inform the public under USC 300aa(10)(c)?

6. Why wasn't the attorney knowledgeable of USC 300aa(10)(b)?

7. Why should our daughter who is severely mentally retarded have such a difficult time having this petition granted?

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TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

PETITION FOR WRIT OF CERTIORARI iii

OPINIONS BELOW iii

STATEMENT OF THE CASE ..... iv-v

REASON FOR GRANTING THE WRIT vi

CONCLUSION vii

INDEX TO APPENDICES

APPENDIX A

APPLICATION NO. _____

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals at Appendix A to the petition is has been designated for publication but is not yet reported.

JURISDICTION

The date on which the United States Court of Appeals decided my case was June 12, 1996.

An extension of time to file the petition for a writ of certiorari was granted to and including November 12, 1996 on November 12, 1996 in Application No. A- _____.

STATEMENT OF THE CASE

We are being denied on 300aa 11(6)(a) - stating if a person brings a civil action after November 15, 1988 for damages for a vaccine-related injury or death associated with the administration of a vaccine before November 15, 1988, such person may not file a petition under subsection (b) of this section for such injury or death. This law did not go into effect until December 19, 1989. We had filed a suit with the State of Louisiana on 1-17-89 before this date. When Congress was in session to change this law how would the public know what they are going to change it to. I feel we fall under 300aa 11(5)(a).

Is it irrelevant that it took five years to make a decision that we did not qualify for the National Vaccine Injury Compensation? Because of 300aa 11(6)(a) I disagree. Our case was reviewed three (3) times before the decision of Special Master Elizabeth Wright was made on June 30, 1995. The case was reviewed on 12/8/93, 3/10/94 and 11/18/94 asking for additional information. I feel that there is some negligence on the court and I do not want to say who is at fault.

I would like to point out that 300aa (10)(c) that the Secretary of the Department of Health shall undertake reasonable efforts to inform the public of the availability of the program. The only publicity that I saw was on television during the month of September, 1990 and you had until October 1, 1990 to get a claim in. I feel that this was unfair.

Also, 300aa (10)(b). The attorney should have informed us of the National Vaccine Injury Compensation Program. I agree when we approach a local attorney he forward the information to an attorney out of town because he was unfamiliar with it. But if the court was in my position when you have a child that has been injured by the vaccine that require total

attention it is hard to keep up with the current laws. The main concern is trying to get your child well. When you are in and out of the doctors office and hospital and working full time there is very little time to do anything. We did not qualify for any assistance to help defray the medical cost so both parents had to work.

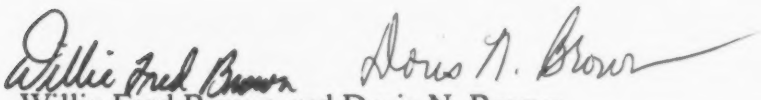
REASONS FOR GRANTING THE PETITION

My child is severely mentally retarded and we still cannot get any help. I want to keep my child at home and not in an institution. I am appealing to The Supreme Court for some justice and understanding.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Willie Fred Brown and Doris N. Brown

March 6, 1997

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

96-5068

Willie F. Brown and Doris N. Brown,
as parents of Sarah J. Brown,

Petitioners-Appellee.

V.

Secretary of

Health And Human Services,

Respondent-Appellee.

DECIDED: June 12, 1996

Before Archer, Chief Judge, Clevenger, and Rader, Circuit Judges. Archer, Chief Judge.

Willie and Doris Brown appeal from the judgment of the Court of Federal Claims affirming the Special Master's dismissal of their petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. 300aa-1 to -34 (1994) (Vaccine Act), for an injury suffered by their daughter. Brown v. Secretary of Dept. of Health and Human Servs., 34 Fed. Cl. 663(1995). We affirm.

DISCUSSION

Appellants filed a petition for compensation under the Vaccine Act alleging that their daughter, Sarah, suffered an injury by reason of a diphtheria-pertussis-tetanus (DPT) vaccination. The Special Master dismissed their petition because the Browns had filed a civil action for damages after November 15, 1988, and were thus barred by 300 aa-ll(a)(6) from pursuing a petition under the Vaccine Act. Find no error of law or abuse of discretion, the Court of Federal Claims affirmed.

We review do novo the decision of the Court of Federal Claims as to whether the special master's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Knudsen v. Secretary of the Dep't of Health & Human Servs., 35 F.3d 543, 546(Fed. Cir. 1994); Hines v Secretary of the Dep't of Health & Human Servs., 940 F.2d 1518, 1524(Fed. Cir. 1991).

Section 11(a)(6) of the Vaccine Act Provides:

> If a person brings a civil action after November 15, 1988 for damages for a vaccinerelated injury or death associated with the administration of a vaccine before November 15, 1988, such person may not file under subsection (b) of this section for such injury or death.

Under this section, a civil suit for an injury resulting from a vaccination administered before November 15, 1988, which is filed after that date, constitutes an election and precludes the filing of a claim under the Vaccine Act., See, e.g., Salceda v. Secretary of Health & Human Servs., 70 F.3d 608, 609(fed. Cir. 1995).

The pertinent facts of this case are not in dispute. Sarah received the DPT vaccination that the Browns allege caused her injuries in February, 1986. The Browns initiated a civil action on January 17, 1989 by sending a letter to the Louisiana Commissioner of Insurance and then filing suit on May 25, 1990 in a Louisiana state court against the physician who administered the vaccination. Thus, the Browns' claim falls squarely within ll(a)(6)-the Browns filed a civil action after November 15, 1988, for injuries associated with a vaccination administered before November 15, 1988 - and, as a result, the Browns may not file a petition under the Vaccine Act. Accordingly, the Special Master did not err by dismissing the Browns' petition and the judgment of the Court of Federal Claims is affirmed.

The Browns argue that, because they dismissed the civil suit on September 30 1990, they have complied with 11(a)(5)(A).[1] and should be allowed to file a petition under the Vaccine Act. This section is applicable, however, because the Browns did not have a civil action pending on the effective date of that subpart, October 1, 1988, as required by that section.

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1. Section 11(5)(A) provides:

A plaintiff who on October 1, 1988, has pending a civil action for damages for a vaccine-related injury or death may, at any time within 2 years after October 1, 1988, or before judgment, whichever occurs first, petition to have such action dismissed with prejudice or costs and file a petition under subsection (b) of this section for such injury or death.

42 U.S.C.
300aa(11)(5)(A)(1994)

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